

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RHIANNON MONTOYA,

Plaintiff,

vs.

Cause No.

BOARD OF COUNTY COMMISSIONERS FOR
RIO ARriba COUNTY, RIO ARriba COUNTY
and LARRY DeYAPP, JOSE LUIS GALLEGOS
and ORLANDO ULIBARRI, in their individual
and official capacity,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446(a) and (b), Defendants Board of County Commissioners for Rio Arriba County, Rio Arriba County, Larry DeYapp and Jose Luis Gallegos, by and through their undersigned counsel, Yenson, Allen & Wosick, P.C. (Robert W. Becker, appearing), give Notice of Removal to this Court of the civil action filed in the First Judicial District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2015-00215, by Plaintiff, Rhiannon Montoya, and as grounds therefore state:

1. On March 5, 2015 Plaintiff filed a Complaint for Civil Damages against Rio Arriba County and the Rio Arriba County Detention Center. No federal claims were asserted therein. A copy of the Complaint is attached hereto as Exhibit A.

2. Defendant Rio Arriba County and Rio Arriba County Detention Center answered the Complaint on April 3, 2015. See Answer attached as Exhibit B.

3. On March 7, 2016, the state district court entered an order permitting Plaintiff to amend her suit to add certain parties, drop certain parties and to add federal civil rights claims. See Order Amending Complaint and Caption attached as Exhibit C. The Amended Complaint is attached as Exhibit D. Defendants Board of County Commissioners for Rio Arriba County, Rio Arriba County, Larry DeYapp and Jose Luis Gallegos acknowledged service of the Amended Complaint on March 16, 2016. See Acknowledgment of Service attached as Exhibit E. Defendant Orlando Ulibarri has not been served with the Amended Complaint.

4. This Notice of Removal is timely as it was filed within thirty (30) days of entry of the order by the state district court allowing the filing of an amended complaint to add parties and to add federal civil rights claims, and within thirty (30) days of acknowledging service of the Amended Complaint pursuant to 28 U.S.C. § 1446(b)(3) by the served Defendants.

5. All served Defendants, by and through their undersigned counsel, consent to the removal of this Amended Complaint pursuant to 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Rio Arriba, State of New Mexico.

6. The claims stated against Defendants that are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) are as follows:

a. Count II, alleging violations of the Eighth and Fourteenth Amendments to the United States Constitution. Exhibit D, Count II, ¶¶'s 75-81.

b. Count III, alleging violations of the Fourth Amendment to the United States Constitution. Exhibit D, Count III, ¶¶'s 82-91.

c. Count IV, alleging violation of the Fourteenth Amendment to the United States Constitution, Exhibit D, Count IV, ¶¶'s 92-103.

d. Count V, alleging violation of the Eighth and Fourteenth Amendments to the United States Constitution. Exhibit D, Count V, ¶¶'s 104-112.

e. Count VI, alleging violation of the Fourth Amendment to the United States Constitution. Exhibit D, Count VI, ¶¶'s 113-120.

f. Count VII, alleging violation of the Fourteenth Amendment to the United States Constitution. Exhibit D, ¶ 131.

g. Count VIII, alleging violation of the substantive due process clause of the Fourteenth Amendment to the United States Constitution. Exhibit D, ¶¶'s 132-144.

7. Federal questions thus appear on the face of Plaintiff's Amended Complaint. The Court also has supplemental jurisdiction of the remaining state law claims pursuant to 28 U.S.C. § 1367 as they form part of the same case or controversy under Article III of the United States Constitution. See Exhibit D, Count I, ¶¶'s 60-74; and ¶¶'s 75-144, alleging state tort and state constitutional claims.

8. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will file a Notice of Filing of State Court Record and certified copies of the pleadings filed in the First Judicial District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2015-00078, within thirty (30) days of filing this Notice of Removal. A Civil Cover Sheet is attached as Exhibit F.

Respectfully submitted,

YENSON, ALLEN & WOSICK, P.C.

/s/ Robert W. Becker

Robert W. Becker

*Attorney for Defendants Board of County
Commissioners for Rio Arriba County,
Rio Arriba County, Larry DeYapp and
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I HEREBY CERTIFY that on the 5th
day of April, 2016, I filed the foregoing
electronically through the CM/ECF filing
system, which caused the following parties
or counsel to be served by electronic means,
as more fully reflected on the Notice of
Electronic Filing and mailed same by first
class mail to:

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/s/ Robert W. Becker